

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

**CRAIG LYONS, et al.,
On Behalf of Themselves and All Others
Similarly Situated,**

Plaintiffs,

vs.

Case No. 4:12-cv-00245-JM

**CONAGRA FOODS PACKAGED FOODS,
LLC,**

Defendant.

JOSE SARABIA, et al.,

Plaintiffs,

vs.

Case No. 4:13-cv-00096-JM

**CONAGRA FOODS PACKAGED FOODS,
LLC,**

Defendant.

**DEFENDANT’S NOTICE OF INTERVENING AUTHORITY AND
MOTION FOR A STATUS CONFERENCE**

Defendant notifies the Court of intervening authority from the Arkansas Supreme Court that affects the status of this case and requests that the Court schedule a conference with the parties to address a schedule for resolving the remaining issues in this case.

On October 31, 2013, this Court held that 29 U.S.C. § 203(o), which allows collective bargaining partners to exclude time spent changing clothes and washing from compensable time under the Fair Labor Standards Act (“FLSA”), “should apply to Plaintiffs’ claims under the FLSA and the [Arkansas Minimum Wage Act (‘AMWA’)].” *Lyons* Dkt. No. 360, at 6. The

Court therefore dismissed Plaintiffs' claims for time spent donning, doffing, and walking. *See Lyons* Dkt. Nos. 360, 402. As a result, only Plaintiffs' claims for time spent checking out and checking in tools remain.

Yesterday, the Arkansas Supreme Court held that § 203(o) does not apply to claims under the AMWA. *See Gerber Prods. Co. v. Hewitt*, No. CV-15-966, slip op. at 14 (Ark. May 26, 2016), attached as Exhibit A. This decision is contrary to this Court's previous orders, and it impacts this case.

Defendant therefore requests a status conference with the Court at some date in the next thirty to sixty days, during which the Court and the parties can address the effect of *Gerber* on this case and set a schedule for resolving the remaining issues. Prior to the status conference, the parties can meet and confer regarding a proposed schedule and provide a report of that conference to the Court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies the foregoing was filed via the Court's CM/ECF System on this 27th day of May 2016 and thereby electronically served upon the following counsel of record:

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